



REPLY TO
ATTENTION ☐

DEPARTMENT OF THE ARMY
U.S. ARMY ENGINEER DISTRICT, SACRAMENTO
CORPS OF ENGINEERS
1325 J STREET
SACRAMENTO, CALIFORNIA 95814-2922

CERTIFIED MAIL RETURN RECEIPT REQUESTED

September 7, 2005

Regulatory Branch (199400294)

Preston M. Avery
5245 Shady Avenue
San Jose, California 95129

Dear Mr. Avery:

I am writing to you concerning ongoing unauthorized discharges of dredged or fill material into waters of the United States. The unauthorized discharges occurred in wetlands adjacent to Piper Slough located at Assessor's Parcel Number 029-010-017, on Bethel Island in Contra Costa County, California.

Based on the available information, and a July 6, 2005, site visit by William Guthrie of this office, we have determined approximately 70 acres of waters of the United States, including wetlands, are present within your project area. These waters are regulated under Section 404 of the Clean Water Act since they are adjacent to Piper Slough which is a navigable water of the United States. It appears that approximately 6 acres of these waters have been filled.

Section 404 of the Clean Water Act requires that a Department of the Army (DA) permit be obtained prior to discharges of dredged or fill material into a water of the United States including wetlands. Since a DA permit has not been issued authorizing these discharges, your work is in violation of the Clean Water Act. We have enclosed an extract of this law for your reference. We sent you Notices of Violation on May 13, 1994, September 8, 1994 and December 12, 1994; as such, we consider your unauthorized discharges willful and flagrant.

You are hereby directed to cease and desist from any additional discharges of fill material into wetlands adjacent to Piper Slough, until this violation is resolved. Potential enforcement actions, in lieu of or in addition to fines and penalties, include directing removal of the unauthorized fill and restoration of the affected areas.

We are currently conducting an investigation to determine the impact of this work on the public interest and the course of action that should be taken. To ensure that all pertinent information is available for our evaluation and included in the public record, you are invited to provide any information which you feel should be considered. Your plans for utilization of this work and your evaluation of the need to retain this fill may be of particular significance in determining what actions are to be taken. Since the information

WJM
RECEIVED
SACRAMENTO
CVRWDCB
13 SEP 13 PM 3:41

provided will become a part of the public record, it may be presented in any court action that could result from this investigation. Any information you wish to provide should reach this office no later than September 29, 2005.

This jurisdictional determination is valid for five years from the date of this letter, unless new information warrants revision of the determination before the expiration date. A *Notification of Administrative Appeal Options and Process and Request for Appeal* form and a tolling agreement for the jurisdiction determination are enclosed. If you wish to appeal this approved jurisdictional determination, please follow the procedures on the form. You should provide a copy of this letter and notice to all other affected parties, including any individual who has an identifiable and substantial legal interest in the property. This determination has been conducted to identify the limits of Corps of Engineers' Clean Water Act jurisdiction for the particular site identified in this request. This determination may not be valid for the wetland conservation provisions of the Food Security Act of 1985. If you or your tenant are USDA program participants, or anticipate participation in USDA programs, you should request a certified wetland determination from the local office of the Natural Resources Conservation Service, prior to starting work.

Please refer to identification number 200500271 in any correspondence concerning this project. If you have any questions, please contact William Guthrie at our Delta Office, 1325 J Street, Room 1480, Sacramento, California 95814-2922, email William.H.Guthrie@usace.army.mil, or telephone 916-557-5269. You may also use our website: www.spk.usace.army.mil/regulatory.html.

Sincerely,

ORIGINAL SIGNED

Andrew J. Rosenau
Chief, Regulatory Branch

Enclosure(s)

Copy furnished without enclosure(s):

Tim Vendlinski, U.S. Environmental Protection Agency, Region IX, WTR-8, 75
Hawthorne Street, San Francisco, California 94105- 3901

Roberta Gerson, U.S. Fish and Wildlife Service, 2800 Cottage Way, Suite W2605,
Sacramento, California 95825

William Marshall, Storm Water and Water Quality Certification Unit, Central Valley
Regional Water Quality Control Board, 11020 Sun Center Drive #200, Rancho
Cordova, California 95670-6114

Terry Plys, Contra Costa County, East County Building Inspection Department, 1191
Central Boulevard, Suite C, Brentwood, California 94513